

Dear Sarah:

I have attached the Tribe's objective and proposed agenda for our upcoming meeting on July 24, 2012. If you could insert the names and titles of all attendees from EPA, as well as the specific location of the meeting, that would be great. Please also confirm that you will have A/V equipment on hand to enable us to deliver our presentation. This is an important and expensive trip for us out to D.C., so we're really hoping to make our two hours together count. To help achieve this end, we are preparing and will provide you with a copy of our presentation at least one week in advance of our meeting. We think it would help facilitate a more efficient meeting if the panelists could review that presentation, along with the Tribe's March 13, 2012 letter and November 30, 2011 presentation to EPA, prior to the meeting. Such review will help minimize the amount of time we need to spend on background issues and allow us to focus on the questions presented to the panel.

I also think our meeting will be more productive if we can agree to three basic assumptions beforehand. These include:

1. In the context of a TMDL for a multi-jurisdictional waterway, EPA requires an upstream sovereign to meet the water quality standards of a downstream sovereign.
2. EPA will reject an upstream sovereign's determination of compliance with the downstream sovereign's water quality standards where the methodology underlying that determination contravenes downstream standards.
3. For purposes of questions 1 and 2, EPA treats states and tribes with treatment-as-a-state status identically.

Finally, I want to make it clear that the Tribe is primarily interested in discussing the Pend Oreille River Temperature TMDL for consistency with national TMDL policy and state and tribal water quality standards on the basis of the record before EPA. If it becomes necessary to debate the technical merits of cumulative frequency analysis, we would need to schedule a follow-up meeting. We hope that the panel is selected with this understanding in mind. Additionally, we would appreciate a response to the questions and assumptions posed in this letter.

I look forward to hearing from you soon.

Regards,

Deane Osterman, Executive Director  
[dosterman@knrd.org](mailto:dosterman@knrd.org)  
[www.knrd.org](http://www.knrd.org)  
v 509.447-7282  
c 509.993.0879

Draft response to Deane:

Dear Deane,

Attached please find our markup of the Kalispel Tribe's draft agenda showing with specific location information for July 24, participants on our informal HQ technical review team, other HQ participants, and participants (via phone) from EPA Region 10. We've also made one change to the "Questions Presented" section to reflect our understanding that a primary purpose of the July 24 meeting is to provide the tribe an opportunity to explain to the EPA HQ review team why it believes each of the four subparts to the "Questions Presented" is true.

We will plan to have a laptop, projector and screen, and Internet connection (not wireless) for delivery of the Kalispel Tribe's presentation. When I receive the presentation about July 17, I will load this onto the laptop and have it ready for presenting during your visit.

It is our original understanding that this visit is the Kalispel Tribe's opportunity to present technical and legal issues it has identified with the Pend Oreille temperature TMDL to the informal HQ review team. As I mentioned earlier, EPA HQ review team plans to listen carefully to the Kalispel Tribe's presentation in order to understand as fully as possible the issues the tribe has identified. As necessary and appropriate members of the review team may ask as best as possible (possibly asking clarifying questions). During the meeting members of the review team do not expect to debate technical or legal points with the tribe's presenters or arrive at any decisions regarding the validity of the tribe's points. From EPA HQ's perspective, we view the meeting as primarily an opportunity to better understand the tribe's perspective on this TMDL, from the tribe's own experts. We expect that, shortly after our meeting on the 24th, we will follow up with the Region regarding our collective thoughts as the Region makes its final decision. We see our role ultimately as providing legal, technical, and policy input to the Region, as it reviews the Washington state TMDL ~~EPA HQ and Region 10 work together in close coordination.~~

In your email, you seek agreement to three "basic assumptions" before the meeting on July 24. Without more conversation with tribal representatives about these assumptions, we do not believe that will be possible. We would be happy to discuss these assumptions with you at the meeting and would particularly raised a number of policy issues, which are important but complicated issues/questions. In the visit, we welcome your thoughts on the following questions ~~points~~ to provide us a better understanding of how the ~~use points~~ apply, in particular, to our review of this TMDL ~~this situation:~~

1. What does Kalispel Tribe believe it means to say that “EPA requires an upstream sovereign to meet the water quality standards of a downstream sovereign?” ~~in this particular TMDL?~~
2. What does Kalispel Tribe believe it means to say “EPA will reject an upstream sovereign’s determination of compliance with the downstream sovereign’s water quality standards where the methodology underlying that determination contravenes downstream standards?” ~~in this particular TMDL?~~
3. For purposes of questions 1 and 2, and in the context of the Pend Oreille temperature TMDL, what does is the Kalispel Tribe ~~’s~~ believe it means to say “EPA treats states and tribes with treatment-as-a-state status identically,” and is that the same as ~~expectation for~~ “treatment in the same manner as a state?”

We were somewhat puzzled by your statement that “if it becomes necessary to debate the technical merits of cumulative frequency analysis, we would need to schedule a follow-up meeting.” While we do not see this meeting as an occasion for a “debate” about the legal or technical aspects of this TMDL, we would find it very helpful for the tribe to present a full explanation of its critique of Washington state’s methodology and justification of its own methodology. Indeed, the reasonableness of the methodology employed appears to be central to each of the four subparts to your “Questions Presented.”

We look forward to Kalispel Tribe’s visit, and please let me know if you have any further questions about the substance and logistics of scheduling this meeting.